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From the Seventh through the Fifteenth Century*

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Protimesis (Preemption) in Byzantium

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The right of certain categories of persons to *protimesis* (preemption) in cases of the sale of property has attracted the attention of researchers into the Byzantine economy and Byzantine law from a very early date, although no final conclusions as to its nature and the rules that governed it have yet been formulated.¹ This chapter, of limited extent and introductory nature, does not provide solutions to many of the unanswered questions, but examines many instances of *protimesis* primarily in light of the middle Byzantine laws that concerned the way it operated within the legal framework of the day. The institution of *protimesis* long predates the seventh century, the period from which this economic history of Byzantium sets out. The roots of the institution seem

This chapter was translated by John Solman.

¹ On *protimesis*, see F. Schupfer, “Romano Lecapeno e Federico II a proposito della προτίμησις,” *Atti della Reale Accademia dei Lincei* 287 (1890) (Rome, 1891): 249–79; K. E. Zachariae von Lingenthal, *Geschichte des griechisch-römischen Rechts*, 3d ed. (Berlin, 1892; repr. Aalen, 1955), 236–48; G. Platon, *Observations sur le droit de προτίμησις en droit byzantin* (Paris, 1906); G. Ostrogorsky, “Die ländliche Steuergemeinde des byzantinischen Reiches im X. Jahrhundert,” *Vierteljahresschrift für Sozial- und Wirtschaftsgeschichte* 20 (1927): 32–35; P. Zepos, “Τινά περί τῆς βυζαντινῆς προτιμήσεως κατὰ τὸ δίκαιον τῶν παραδουναβείων χωρῶν,” *Μνημόσυνα Παππούλια* (Athens, 1934), 291–301; G. Ostrogorsky, “The Peasant’s Pre-Emption Right: An Abortive Reform of the Macedonian Emperors,” *JRS* 37 (1947): 118–26; M. Bellomo, “Il diritto di prelazione nel basso impero,” *Annali di storia del diritto* 2 (1958): 187–228; N. P. Matses, “Ζητήματα ἐκ τοῦ θεσμοῦ τῆς προτιμήσεως ἐν τῷ βυζαντινῷ δικαίῳ,” *ΕΕΒΣ* 36 (1968): 45–54; P. Lemerle, *The Agrarian History of Byzantium from the Origins to the Twelfth Century* (Galway, 1979), 87–108; J. Vin, “Pravo predpochtēniia v pozdnevizantiiskoi derevne,” *VizVrem* 45 (1984): 218–29; J. Vélissaropoulos-Karakostas, “ΣΥΝΕΠΑΙΝΟΥΝΤΕΣ: Aux origines du droit de préemption,” *Symposion 1988: Vorträge zur griechischen und hellenistischen Rechtsgechichte (Siena–Pisa, 6.–8. Juni 1988)*, ed. G. Nenci and G. Thür (Cologne, 1990), 413–24; E. Papagianni, “Ο ὅρος Ἀνακοίνωσις στό ἐμπράγατο δίκαιο τῆς Βυζαντινῆς περιόδου,” *Βυζαντικά* 10 (1990): 213–26; eadem, “Vorkaufrecht und Verwandtschaft,” *Eherecht und Familiengut in Antike und Mittelalter*, ed. D. Simon (Munich, 1992), 148–60; eadem, Ἡ νομολογία τῶν ἐκκλησιαστικῶν δικαστηρίων τῆς βυζαντινῆς καί μεταβυζαντινῆς περιόδου σέ θέματα περιουσιακοῦ δικαίου (Athens, 1992), 1:221–56; M. Kaplan, *Les hommes et la terre à Byzance du VIe au XIe siècle: Propriété et exploitation du sol* (Paris, 1992), 413–29, 434–36; N. Svoronos, *Les Nouvelles des empereurs macédoniens concernant la terre et les stratiotes*, ed. P. Gounaridis (Athens, 1994), 13–40 (cf. the adverse criticism of this edition by L. Burgmann, “Editio per testamentum,” *Rechtshistorisches Journal* 13 [1994]: 455–79); H. Saradi, “The Neighbors’ Pre-Emption Right: Notes on the Byzantine Documents of Transactions,” *Δίπτυχα* 6 (1995–96) [= *Μνήμη Bruno Lavagnini*]: 267–89; see also the publications referred to in the notes below. See now A. Kabas, *Περί Προτιμήσεως* (Athens, 2000).

to stretch back to the Hellenistic era, and it is dealt with in early Byzantine laws.² It is not impossible, then, that *protimesis* had always influenced property transactions and that, for reasons not yet fully clarified, it took on a fresh significance during and after the tenth century, when it could be said to have been reintroduced into the law of the day.³

Law is of interest here primarily to the extent to which it had an impact on the economic history of Byzantium, and not in any narrowly dogmatic sense. Thus I do not discuss the extent to which *protimesis* was a distinctive form of real right⁴ or a restriction on the right of ownership,⁵ but the manner in which it affected the law of land-ownership, especially in rural areas. G. Platon's approach,⁶ which sought an explanation of the existence of the right in the tendency for property to "become intermingled" (*anamige*), is extremely interesting in legal terms and also of great use for a study of this issue. However, an economic history of Byzantium is more concerned with the practical objectives of the legislator than with the theoretical background those objectives may have had, so I will not deal with this theory in detail here.

Before discussing individual texts and their functions, we need to look at the concept behind the term *anakoinosis*, often found in the Byzantine sources in conjunction with *protimesis*. In some cases, the sources refer to *anakoinosis choriou*, which seems to allude to the view of a community as a fiscal as well as a geographical entity⁷ and was certainly bound up with the right of *protimesis*; in other cases, the sources use the term *anakoinosis* without necessarily linking it to communal lands. As I hope I have succeeded in demonstrating elsewhere, in the latter instance the *anakoinosis* might denote a true state of affinity between a person and a property from which a right of *protimesis* might arise. There is special interest in the manner in which the term is used when a number of prospective new owners of the property presented themselves, each of them grounding his right of *protimesis* on a different causal factor. As we shall see, these grounds were not all equally strong. In such cases, only the strongest ground created a relation of *anakoinosis* to the property in the final assessment and thus implied a right of *protimesis*. Finally, it should be noted that the term could refer not only to the relationship between persons and property but also to relations between pieces of property that went beyond mere neighborhood (*geitonia*), as in the case of the surrounding of one piece of land by another, or of a number of structures standing on common ground.⁸

The earliest law of the middle Byzantine period reintroducing *protimesis*⁹ into the

² See Vélissaropoulos-Karakostas, "ΣΥΝΕΠΑΙΝΟΥΝΤΕΣ," and Papagianni, "Vorkaufsrecht," 149–50.

³ Cf. Svoronos, *Novelles*, 14–28, and Burgmann, "Editio," 469–70.

⁴ See Zepos, "Προτίμησις," 293, and G. Petropoulos, *Ἱστορία καὶ Εἰσηγήσεις τοῦ Ρωμαϊκοῦ Δικαίου*, 2d ed. (Athens, 1963), 957–58.

⁵ See M. Kaser, *Das römische Privatrecht*, 2d ed. (Munich, 1975), 2:269, and D. Gofas [G. Kophas], *Ἱστορία καὶ Εἰσηγήσεις τοῦ Ρωμαϊκοῦ Δικαίου* (Athens, 1989), 3:172.

⁶ Platon, *Observations*, 18, 20.

⁷ For the communities, see Kaplan, *Hommes et la terre*, 186–203.

⁸ For more detail, see Papagianni, "Ἀνακοίνωση."

⁹ I do not agree with Svoronos' (*Novelles*, 28–46) view that Leo VI developed "reformist" activities in this respect, principally because I follow the belief of A. Schminck ("Novellae extravagantes" Leons

Byzantine legal system is a novel of Emperor Romanos I Lekapenos¹⁰ issued in 922 or, according to N. Svoronos, 928.¹¹ Under this law, when property was sold or otherwise alienated for a consideration, preference had to be given to the following persons, in order: (1) co-owners, even after the distribution of the jointly held property, and in the following order: (a) joint owners who were also kin; (b) joint owners by virtue of a previous relationship of association, such as joint purchase; (c) ordinary joint owners, as created, for example, by the independent purchase of notional shares in a property; (2) those who possessed property sharing the same fiscal obligation or paying levies to the same landlord (making them *homoteleis*); (3) neighbors. These categories are adduced not from a verbatim reading of the novel, but from its interpretation,¹² greatly aided by an anonymous commentary in codex Paris gr. 1355.¹³

This commentary raises a problem in connection with the first group in order of priority (co-owners who were also kin). The expression οἱ ἀναμιξ συγκείμενοι συγγενεῖς by which the novel referred to these persons indicates that they were not blood relatives in general but only those with a right of co-ownership on the property whose ownership was to be transferred. It would seem, then—perhaps as a result of the previous history of the institution—that it was not self-evident to the Byzantines that a blood relationship was not in itself sufficient to create a right of *protimesis*: a connection with the property to be alienated was also necessary.¹⁴ Indeed, as can be seen from sources detailing practice rather than law and dating from times later than the novel, kinship was a factor taken into much wider consideration during implementation of the rules of the law of preemption than the novel of Romanos and the anonymous commentary would allow us to suppose.¹⁵ It is not impossible that those who enforced the law, perhaps conforming to popular belief, sometimes applied the right of preemption to categories of persons outside those specified above, including, for example, the occupants of the property, although it is not possible to adduce any such right from the text of the novel, even indirectly.¹⁶

Furthermore, the novel of Romanos I established the framework that ought to gov-

VI,” *Subseciva Groningana IV. Novella Constitutio: Studies in Honour of Nicolas van der Wal* [Groningen, 1990], 195–201) to the effect that the so-called Novel 114 of this emperor is a forgery. On this question, see also Burgmann, “Editio,” 470, 478–79. Kaplan (*Hommes et la terre*, 410–14) also attributes “reformist” legislative activity to Leo VI.

¹⁰ Svoronos, *Novelles*, 47–71; F. Dölger, *Regesten der Kaiserurkunden des oströmischen Reiches* (Munich–Berlin, 1924), no. 595.

¹¹ See Svoronos, *Novelles*, 33, 59. As for Svoronos’ dating, Lemerle (*History*, 87) has his reservations, Kaplan (*Hommes et la terre*, 415–16) adopts it, and Burgmann (“Editio,” 470) is absolutely opposed to it.

¹² See Schupfer, “Romano Lekapeno,” 252–54; Zachariae von Lingenthal, *Geschichte*, 239–44; Ostrogorsky, “Steuergemeinde,” 33–34; Lemerle, *History*, 91–94.

¹³ See Zepos, *Jus*, 1:198–200, and the new edition, with commentary, by A. E. Laiou, *Mariage, amour et parenté à Byzance aux XIe–XIIIe siècles* (Paris, 1992), 148–54, 178–81.

¹⁴ The role of kinship in *protimesis* is overemphasized by N. Pantazopoulos, *Ρωμαϊκόν δίκαιον ἐν διαλεκτικῇ συναρτήσει πρὸς τὸ ἐλληνικόν* (Thessalonike, 1979), 2:150.

¹⁵ See Papagianni, “Vorkaufsrecht,” and eadem, *Νομολογία*, 224–30.

¹⁶ See Papagianni, *Νομολογία*, 234–40.

ern the right of *protimesis* in terms of the type of contract to which it could be applied and the procedure that had to be complied with when the persons with priority were exercising their rights. The right of preemption could only arise—and, correspondingly, there was an obligation that the persons with priority be informed of their right—in cases of the sale, *emphyteusis*, or leasing of property; it was expressly precluded in the conclusion of donations of all kinds, exchanges, arrangements, the formation of dowries, and the contents of wills. The invitation to declare interest was to be issued by the person owning the property. The persons with priority were all to be invited to declare an interest, which they were required to do within thirty days or, in special cases, four months. A positive declaration of interest on the part of a person with a strong right excluded all those whose rights were weaker, while failure to take action led to the transfer of the right of *protimesis* to the next person in order of priority. If, however, more than one person with equal rights made a timely declaration of interest in acquiring the property, then it was transferred jointly to all of them. The price (and thus, *pro rata*, the rent) ought to be commensurate with the value of the property or with what any third party (without a right of preemption) was prepared to pay, provided that this prospective purchaser was not acting by willful conduct (*dolus*). Exercise of the right of *protimesis* within the set time limits cancelled any previous transfer of ownership. However, in this instance the person possessing the right had to pay the *bona fide* purchaser the price of the property, plus lawful interest and the sum of any expenditure on the property that he might have incurred. In the event of collusion between the vendor and the first purchaser or of a fraudulent donation or some other contract of a similar kind, both the property and the price paid for it were confiscated by the fisc, which was then bound to transfer the ownership of the property in accordance with the rules of the law of preemption.

Needless to say, these rules established by the novel were not strictly complied with, and it would appear that the law was applied with significant variations as to procedural matters such as the obligation to notify the persons with priority and the time limits for exercising the rights, and there would also appear to have been considerable toleration of purchasers who were not in good faith.¹⁷ Indeed, as we shall see, instances of violation of these principles must have been quite frequent; even so, *protimesis* had a powerful impact on the law of property throughout the rest of the Byzantine period and survived into post-Byzantine times, not being abolished in modern Greece until 1856, by the law “concerning the registration of deeds.”

The novel of Romanos I seems to have had two purposes: first, to establish the rules described above for exercise of the right of preemption as an institution of the law of property “in every city and country;” second, of a more fiscal nature, to protect rural communities from the tendency of the *dynatoi* (“the powerful”) to encroach on them. Indeed, the emperor expressly declared that he had issued the law not only out of an interest in the well-being of his subjects, but also so as to benefit the state finances.

¹⁷ See Matses, “Ζητήματα”; Ostrogorsky, “Pre-Emption”; M. T. Fögen, “Zeugnisse byzantinischer Rechtspraxis im 14. Jahrhundert,” *FM* 5 (1982): 232–36; Papagianni, Νομολογία, 241–54.

Scholars as early as K. E. Zachariae von Lingenthal¹⁸ took this declaration by Romanos as evidence linking the issuing of the novel on *protimesis* with the tax system of imposition of the *epibole* and the *allelengyon*, involving the compulsory taxation of the inhabitants of a *chorion* even for community land that had been abandoned or on which a shortage of funds made it impossible to pay taxes.¹⁹ G. Ostrogorsky²⁰ completely embraced this view, seeing *protimesis*—regardless of any other reasons that may have led to its reintroduction—as more or less a concomitant of taxation under the method described above. On this point, however, I incline more toward the view of Platon,²¹ who argued that while the “intermingling” (*anamige*) of property certainly lay behind any relationship of *protimesis*, tax law, rather than the law of property, was relevant to the manner in which it was to be applied in the communities.

In other words, it would seem that in the communities the right of preemption took a form favorable to the members of the village, who were collectively responsible for taxes, and detrimental to the *dynatoi*, who paid their taxes on an individual basis. This unfavorable approach should probably be seen as a preventive measure designed to obstruct the absorption of community land by the great landowners, a development that might have led to the disappearance of uniform taxation. It is also possible that the slackening in the fiscal nature of the institution of preemption in the late Byzantine period and the increasingly frequent use of the term *plesiasmos* (“proximity”) to describe the relations that established it²² were the result of a change in the economic structures of the empire that affected, among other things, the system of taxation.

In connection with the exercise of the right of *protimesis* in the village community, the novel of Romanos states: “In the case of groups of so-called *choria* and *agridia*, let it be *a fortiori* that the inhabitants thereof hold a right of *protimesis* toward one another.”²³ Here I think we are dealing with the *anakoinosis choriou*, involving the compulsory exercise of a right of preemption among the members of the community, although I do not believe this would have meant that the general provisions of law would not have been taken into account when the strength of the right of these persons was being assessed. The emperor’s desire to maintain the closed nature of the village communities—presumably for political as well as economic reasons—is also apparent in the provisions of the same novel concerning the *dynatoi*. They were prohibited from acquiring by purchase, lease, or exchange property within village communities where they did not already own estates. Here it should be noted, however, that the novel’s provisions with regard to the *dynatoi* are not uniform in the two variant texts, published in parallel in the most recent edition.²⁴ The text of the second version, which N. Svoronos

¹⁸ Zachariae von Lingenthal, *Geschichte*, 236–38.

¹⁹ See Kaplan, *Hommes et la terre*, 207–315, 439–43. For taxation, cf. N. Oikonomides, “The Role of the Byzantine State in the Economy,” *EHB* 995ff.

²⁰ Ostrogorsky, “Steuergemeinde,” 35.

²¹ Platon, *Observations*, 126–36.

²² See Papagianni, *Νομολογία*, 234–35.

²³ Ἀλλὰ καὶ ἐπὶ τῆς ὁμάδος τῶν καλουμένων χωρίων καὶ ἀγριδίων πολλῶ μάλλον κρατεῖται, ἵνα καὶ οἱ οἰκήτορες αὐτῶν πρὸς ἀλλήλους ἔχουσιν τὴν προτίμησιν: Svoronos, *Novelles*, 66, lines 53–55.

²⁴ See *ibid.*, 47–50.

regards as not genuine,²⁵ has an interpolation at this point imposing a general ban on the *dynatoi* from purchasing land in the village communities, whether the land belonged to private individuals or was public. Such land could henceforth be transferred only to the ownership of members of the community, and the *dynatoi* might acquire it only if the members of the community repudiated, freely and not under duress, their right to purchase it.²⁶

The adverse treatment of the *dynatoi*—a category that, according to the text of this novel, also included persons who drew such power as they possessed from third parties²⁷—may also be observed in the fact that the law forbade them to acquire the property of poorer persons by donation or testamentary disposition, unless they were kin of the donor or testator, or even by mere concession of use (presumably without a consideration). The novel makes special mention of the relationship of *patroneia*, defined by the terms “protection and assistance.” Here the reference is not to purchase, or to acquisition by other forms of bilateral act or donation, but to the concession of the land by reason of the special personal relations created by *patroneia* between the *dynatoi* and the *penetes*.²⁸ If the *dynatos* infringed these provisions, he would not only lose the land, but would also forfeit to the fisc any price he may have paid for the land.

At the end of the paragraph referring to the *dynatoi*, the second version of the novel (that regarded as inauthentic) continues as follows: “After ten years have elapsed without any objection being raised, no claim can be raised by any of the persons granted preemption by the present or by the state against persons engaging in transactions of any kind or acquiring any thing by donation or inheritance.”²⁹ Two interpretations of this passage have been proposed. According to the first, it means that if the lawful notification had not been made, the right of *protimesis* could be exercised for up to ten years after the transfer of ownership of the property, on the model of the provisions concerning usucaption.³⁰ According to the second, the passage does not refer to *protimesis* in general, but to the acquisition of land, in whatever manner, by *dynatoi*, as is indeed the subject of the paragraph in question.³¹ This is not the place for a critique of one or the other interpretation.³² The passage is mentioned here solely because, on

²⁵ Ibid., 55–58.

²⁶ This passage forms part of the uniform text of the Zachariae von Lingenthal edition (see Zepos, *Jus*, 1:203). For the working methods of Svoronos, who adopts the distinction between the texts, see the critique of Burgmann, “Editio,” 465–66.

²⁷ Svoronos, *Novelles*, 70, lines 83–86. Ἐκεῖνοι δὲ νοεῖσθωσαν δυνατοὶ οἵτινες, κἂν μὴ δι’ ἑαυτῶν, ἀλλ’ οὖν διὰ τῆς ἐτέρων δυναστείας πρὸς οὓς πεπαρῆσιασμένως ᾤκείωνται, ἱκανοὶ εἰσὶν ἐκφοβῆσαι τοὺς ἐκποιοῦντας ἢ πρὸς εὐεργεσίας ὑπόσχεσιν τὴν πληροφορίαν αὐτοῖς παρασχεῖν.

²⁸ See Platon, *Observations*, 136–55, and Kaplan, *Hommes et la terre*, 169–71.

²⁹ Μετὰ μέντοι δεκαετίαν ἀνεπιφάνητον κατὰ τῶν ὅπως οὖν συναλλαξάντων ἢ δωρεᾶς δεξαμένων ἢ ἐκ διαθήκης τι κτησαμένων οὐδεμία παρ’ οὐδενὸς τῶν ἐντεῦθεν προτιμωμένων, ἢ καὶ ὡς ἐκ τοῦ δημοσίου ζήτησις ἔσται: Svoronos, *Novelles*, 71, lines 93–96. This passage, too, is in the Zachariae von Lingenthal edition (see Zepos, *Jus*, 1:204).

³⁰ See N. Matses, Νομικά ζητήματα ἐκ τῶν ἔργων τοῦ Δημητρίου Χωματιανοῦ (Athens, 1961), 54.

³¹ See Zachariae von Lingenthal, *Geschichte*, 246–47.

³² However, for some examples of practices that incline toward the first interpretation, see Papagianni, Νομολογία, 247–50.

the one hand, it could be taken as a further special arrangement for the *dynatoi* (one that might even be in their favor) and, on the other, because it is indicative of the gaps left by the novel of Romanos I—at least in the forms in which we are familiar with it today—for the system by which the institution of *protimesis* functioned during the tenth century.

Two later novels issued by the Macedonian emperors and dealing with “*dynatoi* who encroach on the *anakoinoseis* of the poor” are connected with the law of *protimesis*, or at least with that branch of it that deals with the relations between the powerful and the weak. These are the novels of Romanos I, dating from 934 and prohibiting the acquisition of land in village communities on the part of *dynatoi*, and of Constantine VII, dating from 947, which supplements and makes minor amendments to the novel of Romanos.³³ In these laws, one can clearly discern the desire of the emperors to protect the *anakoinoseis* of the village communities against the depredations of the *dynatoi*. As P. Lemerle has observed,³⁴ the reiteration thirteen years later of the provisions of the novel of 934 is an indication that the general undertaking was not just a consequence of the famine of 927/928, which had reduced the villagers to economic misery, but a major campaign to limit the expansion of the great landowners. Even if we resist being misled by the rather romantic notion that some, at least, of the Macedonian emperors possessed the political will to engage in such an endeavor, and confine ourselves to seeking its origins in the more pedestrian requirements of the public finances as identified by the “technocrats” of the age,³⁵ there can be no doubt that the most important pieces of legislation of the period after Leo VI were designed to do everything possible to protect the small landholdings of rural areas.

The term *protimesis* is also used in a novel issued by Nikephoros II Phokas in 966/967, a passage from which has attracted considerable scholarly attention. The text of the law is as follows: “Since the emperors who ruled before us, in response to the scarcity that occurred in those times, created legislation that rightly prohibited the acquisition of the goods of the poor by the *dynatoi*, and added to this legislation that the poor had the right of *protimesis* on the lands of the *dynatoi*, not only by reason of contiguity but also by reason of the joint payment of tax, and [since] they completely excluded those whose power was increasing day by day, allowing them no loophole of further acquisitions, but, rather, causing even those who earlier had become rich to live in straitened circumstances and in poverty by granting to the poor the right of *protimesis*.”³⁶

³³ Svoronos, *Novelles*, 72–92; Dölger, *Regesten*, no. 628 (See the headings of the novel, as they have survived in the various manuscripts, in Svoronos, *Novelles*, 79–81); Svoronos, *Novelles*, 93–103; Dölger, *Regesten*, no. 656 (see the headings of the novel in Svoronos, *Novelles*, 96–98).

³⁴ Lemerle, *History*, 97.

³⁵ See Burgmann, “Editio,” 456.

³⁶ Ἐπεὶ οὖν οἱ πρὸ ἡμῶν βεβασιλευκότες διὰ τὴν γενομένην κατὰ τὸν τότε καιρὸν ἔνδειαν νομοθεσίαν ἐξέθεντο, καλύοντες τοὺς δυνατοὺς μὴ τὰ τῶν πενήτων καὶ στρατιωτῶν ἐξωνεῖσθαι καὶ καλῶς ποιούντες, προσέθεντο δὲ ἐν αὐτῇ καὶ τὴν προτίμησιν τοὺς πένητας δέχεσθαι εἰς τὰ τῶν δυνατῶν κτήματα, μὴ μόνον ἐξ ἀνακοινώσεως, ἀλλὰ καὶ ἐξ ὁμοτελείας, καὶ πάντα τοὺς καθ’ ἐκάστην αὐξανομένους ἀπέκλεισαν, μὴ

When publishing this novel, Zachariae von Lingenthal believed that it referred to the two laws of Romanos I, that “concerning *protimesis*” and that of 934.³⁷ Lemerle³⁸ tried to settle for one or other of the novels but admitted to experiencing difficulty in doing so, for the following reasons. The novel of 934 was indeed issued, as we know, to rectify the injustices caused by the great famine of 927/928 and so as to prevent great landowners extending their property at the expense of smallholdings, but it makes no explicit mention of *protimesis*, nor, of course, does it contain any such arrangement as described above. As for the novel “concerning *protimesis*,” in which, as we have seen, express mention is made of some priority of the poor over the *dynatoi* when private or public land forming part of the *anakoinosis choriou* was being transferred, Lemerle ran into the stumbling block of its dating to 922, that is, before the famine. Despite his inclination to accept the later dating of the novel proposed by Svoronos, he continued to believe that what it has to say about the priority of the poor over the *dynatoi* is not sufficient to identify it with the law to which the author of the novel of 967 is alluding.

One could note at this point that to date the novel “concerning *protimesis*” to the year 928 solves the first of the two problems. Yet apart from the fact that this dating is not universally accepted, Lemerle’s reservations are also based on matters of substance: that is, on the absence of any reference in the novel “concerning *protimesis*” to the priority of the poor when land belonging to the *dynatoi* was being sold, but only to restrictions on the *dynatoi*. Nonetheless, I believe that the obscure passage in the novel of 967 becomes less troublesome if it is not seen as essential that it should be closely connected with either of the other novels. I think that what Svoronos seems to have believed³⁹ is more likely: in other words, that the author of the law was referring in general to the legislation of his predecessors on the restriction of the power of the *dynatoi* and on soldiers’ land, since some of this legislation was indeed strongly influenced by the consequences of the famine of 927/928. He must also, however, have been referring to a specific arrangement specially concerning the priority of the poor when land belonging to the *dynatoi* was being transferred.

A careful reading of the novels to which we must agree the law of 967 was referring reveals the following passage in a novel of Constantine VII dating from 943: “and in the event of a powerful person selling or otherwise disposing of [land], it was resolved that the villagers with whom the powerful person is in *anakoinosis* are to be preferred, when without the possession of that land or water or mountains theirs cannot be managed.”⁴⁰

δόντες τὴν οἰανοῦν τούτοις παρείδουσιν ἐπικτήσεως, ἀλλὰ μᾶλλον καὶ τοὺς προγεγονότας εὐπόρους ἐκ τοῦ προτιμάσθαι τοὺς πένητας εἰς τὴν ἐξώνησιν στενώσει καὶ ἀπορία συζῆν πεποιηκότες: Svoronos, *Novelles*, 177–81 (the text of the law is on 180–81); Dölger, *Regesten*, no. 712.

³⁷ See Zepos, *Jus*, 1:253 n. 4.

³⁸ Lemerle, *History*, 101 n. 1.

³⁹ Svoronos, *Novelles*, 178.

⁴⁰ καὶ δυνατοῦ προσώπου πιπράσκοντος, ἢ ἄλλως ἐκποιουμένου συνεωράθη προτιμάσθαι τοὺς χωρίτας, ἐν οἷς εἰσι ἀνακεκοινωμένοι, ἢ χωρὶς τῆς ἐκεῖνου νομῆς ἢ τῶν ὑδάτων ἢ τῶν ὀρέων οὐ δύνανται διοικεῖσθαι; in the Svoronos edition (*Novelles*, 102, line 93), the underlined phrase reads ἐν χωρὶς τῆς ἐκεῖνου,

What we see in this passage, I believe, is that the villagers are to be preferred as purchasers of the land belonging to the *dynatos* when their land is linked to it by a relationship of *anakoïnosis* or some other relationship of dependency to such an extent that the economic purpose of the villagers' land could only be fulfilled with the help of the land belonging to the *dynatos*. Here I believe that *anakoïnosis choriou*, in its fiscal sense (typified by the term *homoteleia*, the joint payment of tax), has to be taken for granted, in principle—since we are dealing with a community—and that the legislator was seeking other factors that would imply *anakoïnosis* in its meaning in the law of property. In this instance, that is, *anakoïnosis* must be used both in the sense of a right out of which *protimesis* could arise (even if that right was not so strong as that which a prospective *dynatos* purchaser might have) and also in the sense of a particularly close relationship among pieces of property such as that described above. However, apart from the privileged treatment the villagers enjoyed in connection with the purchase of land connected to their own by a relationship that went beyond mere proximity or over which they enjoyed special rights, the law also granted the privilege on land that was simply taxed jointly with their own—regardless of its geographical location in the community—when without that land their own could not be effectively operated.

In view of the above—and on the basis of such texts as have come down to us, which, unfortunately, often contain obscurities, gaps, and instances of overlapping and repetition—I think that we may have identified the specific arrangement of which the novel of 966/967 is quite clearly critical. There can, in fact, be little doubt of the exaggerated nature of the criticism, since—if the view outlined above is accepted—it would not be possible for any chance member of the community to receive preference in buying the land of the *dynatoi*, nor, of course, would the latter have declined into poverty as a result of this practice. The legislator's wish to favor the *dynatoi* can be seen, then, in the abolition in all circumstances of the favorable treatment of the poor in buying land belonging to the *dynatoi*. Furthermore, it is laid down that henceforth only *archontika prosopa* ("lordly persons") could purchase the lands of the *dynatoi*. On the other hand, land belonging to soldiers and other poor persons could not be bought by the *dynatoi*, even when there were reasons that would theoretically assure them of a right of *protimesis*.

The clear purpose of the novel of 966/967 is to maintain the status quo of land-ownership insofar as the social and economic condition of the owners was concerned. It certainly favors the *dynatoi*, in that it abolishes the *protimesis* of the poor over their lands; at the same time, however, by forbidding them to buy the land belonging to smallholders it put a brake on the excessive expansion of the great estates. Apart from

which is incomprehensible and obviously a printer's error. From the critical note, it is clear that Svoronos must have read the phrase εἰ χωρὶς τῆς ἐκείνου, although ἦ is found in four of the manuscripts he used and in the Zachariae von Lingenthal edition (see Zepos, *Jus*, 1:217, line 20). Given that ἦ and εἰ alternate frequently in the codices, and bearing in mind that a final conclusion as to the correct form in such instances can only be reached by conducting an in-depth study of the specific arrangement introduced by the text, I have proceeded to make the change, which I believe essential in order to restore the sequence of the provisions being commented upon.

its more general interest, the novel also provides a useful piece of information about the means that the economically powerful used to acquire the land of the poor, which they purchased at what were presumably extremely low prices: “We order, in the land of a *dynatos* that is sold, that an *archontikon prosopon* shall succeed in the ownership, a [lordly] person, that is, a person who seems likely to relieve and benefit the poor people neighboring upon him, and if such person, after taking possession of the land, harms his neighbors, it becoming apparent that he is a violent and bad person, he shall be expelled not only from the land he has acquired but also from his patrimony.”⁴¹ The law can thus be seen attempting to make the *dynatoi* behave like good neighbors of the poor, going so far as to provide for a sanction so strong that, given the social and political conditions of the age, it is doubtful whether it could have been imposed.

The novel does not describe any specific practices, but with the help of this piece of information one can gain a better understanding of the reasons that led the author of the novel of 947 to mention in particular the dependence of the effective operation of the land of the poor on that of the *dynatoi* as a reason for the preference of the former. For example, the novel of 947 refers to land belonging to the poor that cannot be managed without the water of the *dynatoi*. If we imagine a situation in which the only well in the area was located within the boundaries of the land belonging to a *dynatos* who prevented his peasant neighbor from gaining access to it, then we can be more or less sure that the peasant would be unable to cultivate his land, which would eventually cease to produce crops and could be bought up by the *dynatos* for a song. As a result, a cunning or simply recalcitrant man with some social influence and power in the local community would very easily be able to ruin another smallholder and turn him into a dependent peasant.

The last imperial novel to deal with the right of *protimesis* was issued by Manuel I Komnenos and dates from 1166.⁴² Preemption is not the main subject of the novel as a whole, but only of part of it. It would appear, at least at first sight, that the novel deals with preemption only in its purely legal or technical sense, and that it does not go into matters of a more general economic or social interest. Indeed, the effort to place some restraint on the great landowners had died out with the Macedonian dynasty, and the century of the Komnenoi is generally regarded as the era in which those landowners flourished, though smallholdings did not disappear. However, as already noted, *protimesis* survived as an institution in the law of property and had such an influence on practice that new rules for its exercise were created, often through violations of its principles.

The novel of 1166 deals with two ways in which these principles were violated. The

⁴¹ . . . εἰς τὸ διαπωλούμενον κτῆμα τοῦ δυνατοῦ . . . τὴν τούτου πάλιν διαδέχεται δεσποτεῖαν ἀρχοντικὸν πρόσωπον, τὸ πρὸς ἀνάπαυσιν δηλονότι καὶ ὠφέλειαν τῶν συμπαρακειμένων τούτῳ πενήτων ἀναφαινόμενον, ὅπερ καί, μετὰ τὸ δεσπῶσαι τοῦ κτήματος, παραβλάπτει τοὺς γειτονοῦντας κατανοούμενον ὡς βίαιον καὶ κακὸν μὴ μόνον ἀπὸ τῆς ἐπικτήσεως, ἀλλὰ καὶ ἀπὸ τῶν γονικῶν ἐκδιώκεσθαι κελεύομεν: Svoronos, *Novelles*, 180, line 31–181, line 37.

⁴² Ruth Macrides, ed., “Justice under Manuel I Komnenos: Four Novels on Court Business and Murder,” *FM* 6 (1984): 122–39; Dölger and Wirth, *Regesten*, no. 1465.

first of these was the acquisition of property on the part of a person without a right of preemption by means of the institution of *antichresis*. The term *antichresis* meant an agreement that the yield on a productive thing bearing a real charge such as a mortgage could be collected by the mortgage lender in order to meet his claim for interest on the capital he had advanced. It emerges from the text of the novel that agreements of this kind were concluded in order to cover fictitious loans with real security behind which a sale was concealed, thus circumventing the persons with a right of *protimesis*. Given that, as a rule, all immovable property produced a yield—if not in the sense of a physical crop, then of rent—such agreements corresponded to what we would call concession of usufruct today.⁴³ Since, furthermore, it could always be argued that, although the capital had been repaid, interest was still due and was still being collected, exploitation of the property could continue until the right of preemption had expired.

The second way of violating the rules of preemption to which Manuel I refers probably concerned large properties. It seems to have been the case that when the persons with priority drew that right from a relationship to only one part of the immovable property, owners were in the habit of holding on to that part of the property only and freely transferring the remainder. The emperor prohibited this practice, observing that it constitutes a violation of the novel “concerning *protimesis*” and stating that a privileged relationship of the person with rights of preemption—for example, a neighbor—applied to the entire property and not only to the possibly small section of it from which the right sprang. I would like to note at this point, however, that the question of “small *anakoinoseis*” to large properties was more complex than apparent from the novel of 1166. We know from the *Peira* that persons with such rights frequently exercised them abusively, attempting to buy only the part of the property that interested them and thus endangering the market value of the remainder. The supreme court of Constantinople introduced into the legal system, by case law, the principle that in cases where the *anakoinosis* was disproportionate to the total area of the property, the owner’s wish should be taken into consideration, and that he should be allowed to decide freely whether he wished the whole of the property to be transferred or not.⁴⁴ Of course, one could not contend that Manuel’s novel abolished this practical rule, which was already about a century old, because the arrangement described by the *Peira* refers not to the retention of the “critical” part of the property but to the fate of the remainder. However, there can be no doubt that the concept of *protimesis* applying in all cases to the entire property to be transferred could lead to injustices.

Conflicts of this sort in the implementation of the rules of preemption do not necessarily conceal attempts on the part of the socially or economically stronger to exploit the weak, nor, of course, do they serve as examples of the establishment of a law that benefited the latter, since a small *anakoinosis* did not necessarily mean that the property from which it stemmed was small. Even so, the novel of 1166 introduces yet another arrangement capable of creating the impression that its objectives were in some way

⁴³ See also Macrides, “Justice,” 178.

⁴⁴ See the *Peira*, 50.2, 3 (Zepos, *Jus*, 4:210–21), and Papagianni, “Ανακοίνωση,” 219–20.

“social” in nature. More specifically, it lays down in connection with *antichresis* that here, too, the rules of *protimesis* should be applied, and that *antichresis* in the event of the existence of persons with *protimesis* should be treated in the manner that Romanos had provided for donations. As we have already seen, that novel dealt with donations in a way that differed from case to case, depending on whether or not the recipient was a *dynatos* or a poor person. The question that arises at this point, and that was a matter of concern to the most recent editor of the novel,⁴⁵ is whether Manuel’s intention was simply to make sure that property actually was being transferred by virtue of *antichresis*—which, if questioned, could be proved in court by the application, *mutatis mutandis*, of the novel of Romanos I—or whether he wished, at the same time, to introduce a general ban on the acquisition by the *dynatoi* of his time of the land of the poor by *antichresis*. This question cannot be answered, since it is impossible to know what the real will of the legislator may have been. However, it has to be reiterated that the novel “concerning *protimesis*” displays in its various forms variations, especially where the *dynatoi* are concerned, that lead to the conclusion that the authentic text has certainly undergone elaboration.

⁴⁵ Macrides, “Justice,” 178.